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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re CATHODE RAY TUBE (CRT)) No.: M-07-5944 SC—MDL NO. 1917
ANTITRUST LITIGATION) [PROPOSED] ORDER GRANTING
This Document Relates to:) DEFENDANTS' JOINT MOTION TO
INDIRECT PURCHASER ACTION.) DISMISS INDIRECT PURCHASER
) PLAINTIFFS' CONSOLIDATED
) AMENDED COMPLAINT
)

1 The Motion to Dismiss Indirect Purchaser Plaintiffs' Consolidated Amended
 2 Complaint ("IP-CAC"), filed by Defendants Beijing Matsushita Color CRT Company, Ltd.;
 3 Daewoo International Co.; Hitachi, Ltd.; Hitachi Asia, Ltd.; Hitachi America, Ltd.; Hitachi
 4 Electronic Devices (USA), Inc.; Hitachi Displays, Ltd.; Irico Display Devices Co., Ltd.; Irico
 5 Group Corporation; LG Electronics, Inc.; LG Electronics USA, Inc.; LG Electronics Taiwan
 6 Taipei Co., Ltd.; MT Picture Display Co., Ltd.; Panasonic Corporation of North America;
 7 Panasonic Corporation; Philips Electronics North America Corporation; Koninklijke Philips
 8 Electronics N.V.; Philips Electronic Industries (Taiwan) Ltd.; Philips da Amazonia Industria
 9 Electronica Ltda.; Samsung SDI America, Inc.; Samsung SDI Co., Ltd.; Samsung SDI
 10 (Malaysia) Sdn. Bhd.; Samsung SDI Mexico S.A. de C.V.; Samsung SDI Brasil Ltda.;
 11 Shenzhen Samsung SDI Co. Ltd.; Tianjin Samsung SDI Co., Ltd.; Samsung Electronics Co.,
 12 Ltd.; Samsung Electronics America, Inc.; Samtel Color, Ltd.; Tatung Company of America,
 13 Inc.; Toshiba Corporation; Toshiba America Electronic Components, Inc.; Toshiba America
 14 Information Systems, Inc.; Toshiba America, Inc.; and Toshiba America Consumer Products
 15 L.L.C. (hereinafter, "Defendants") came on regularly for hearing before this Court.

16 Having considered all papers filed in support of and in opposition to said motion, and
 17 having entertained argument of counsel, and good cause appearing, IT IS HEREBY
 18 ORDERED that Defendants' Motion to Dismiss is GRANTED.

19 1. The IP-CAC is DISMISSED in its entirety because this Court lacks subject
 20 matter jurisdiction over Indirect Purchaser Plaintiffs' ("Plaintiffs") First Claim for Relief
 21 under the Foreign Trade Antitrust Improvements Act of 1982, 15 U.S.C. § 6a, and lacks
 22 subject matter jurisdiction over Plaintiffs' Second, Third and Fourth Claims for Relief under
 23 the Commerce and Supremacy Clauses of the U.S. Constitution. Alternatively, all
 24 allegations in the IP-CAC that are not directed to purported agreements with respect to the
 25 prices or production of cathode ray tubes ("CRTs") sold inside the United States are
 26 DISMISSED pursuant to Fed. R. Civ. P. 12(f), including, but not limited to, ¶¶ 4, 141-188,
 27 198, 204, 206-213.

1 2. Plaintiffs' First Claim for Relief under the Sherman Act; Second Claim for
 2 Relief under the antitrust laws of Arizona, California, Iowa, Kansas, Michigan, Mississippi,
 3 Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Vermont, West Virginia, and
 4 Wisconsin; and Third Claim for Relief under the consumer protection laws of Nebraska and
 5 New York are DISMISSED because Plaintiffs who have purchased finished products
 6 containing CRTs have failed to satisfy the requirements for antitrust standing under the
 7 principles articulated in *Associated General Contractors of California v. California State*
 8 *Council of Carpenters*, 459 U.S. 519 (1983) and its progeny.

9 3. Plaintiffs' Third Claim for Relief under the consumer protection laws of New
 10 York, Massachusetts, Maine, and Hawaii are DISMISSED because Plaintiffs' allegations fail
 11 to satisfy the requirements of these statutes.

12 4. Plaintiffs' Fourth Claim for Relief for unjust enrichment under the common
 13 law of Arizona, California, Hawaii, Iowa, Kansas, Massachusetts, Michigan, Minnesota,
 14 Mississippi, Nebraska, Nevada, New Mexico, New York, North Carolina, Rhode Island,
 15 South Dakota, Tennessee, Vermont, West Virginia, and Wisconsin are DISMISSED with
 16 prejudice because Plaintiffs improperly seek to circumvent restrictions on recovery under
 17 those states' substantive antitrust and/or consumer protection statutes.

18 5. In the alternative, Plaintiffs' Second and Third Claims for Relief are
 19 DISMISSED with prejudice to the extent that they seek recovery for conduct falling outside
 20 the applicable state statute of limitations, as Plaintiffs have not satisfied the requirements for
 21 tolling the statute of limitations in any of the states at issue.

22 Further, Plaintiffs' Second and Third Claims for Relief under the laws of
 23 Nebraska, Nevada and Hawaii are DISMISSED with prejudice to the extent that they seek
 24 damages for purchases made before the date that each state passed its statute repealing the
 25 restriction on indirect purchaser actions set forth in *Illinois Brick Co. v. Illinois*, 431 U.S. 720
 26 (1977). Because these state statutes do not apply retroactively, Plaintiffs' claims in
 27 Nebraska, Nevada and Hawaii must be limited to purchases made only after the date that the
 28

1 repealer statute went into effect (*i.e.*, July 20, 2002, October 1, 1999, and June 25, 2002,
2 respectively).

3 IT IS SO ORDERED.

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5 DATED: _____

6 HON. SAMUEL CONTI
7 UNITED STATES DISTRICT JUDGE

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